



January 25, 2002

Ms. Cynthia B. Garcia  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2002-0380

Dear Ms. Garcia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157757.

The City of Fort Worth (the "city") received a request for "a copy of any reports generated since September 11, 2001, in respect to security deficiencies in [city] facilities and any reports that make recommendations or that outline options for improving security in [city] facilities." You claim that the requested information is excepted from disclosure under sections 552.108, 552.110, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered your comments provided in response to our request for additional information under section 552.303 of the Government Code.

We first consider you claim under section 552.111. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.). An agency's policymaking functions do not encompass

internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5. After reviewing the submitted information we agree that some of the documents contain advice, recommendations, opinions, and other material reflecting the policymaking processes of the city; however, the remaining information does not. We have marked the information the city may withhold under section 552.111.

Next, we consider your section 552.108(b)(1) claim for the remaining documents and your general assertion that the release of the submitted records could aid terrorists in devising "a plan of where to hide or store explosives or other chemicals." Section 552.108(b) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . ." This section excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. Open Records Decision No. 434 at 3 (1986).

In this instance, you have not demonstrated that the remaining documents are the records of a law enforcement agency or prosecutor as required by section 552.108. Moreover, after reviewing the remaining records, we find that you have not otherwise demonstrated how the release of these particular documents would interfere with the law enforcement interests of the city or any other law enforcement agency. *See generally* Attorney General Opinion MW-381 (1981) (stating that whether disclosure of particular records will interfere with law enforcement or crime prevention must be determined on a case-by-case basis); Open Records Decision No. 434 (1986). Consequently, we conclude that the remaining information is not excepted from public disclosure under section 552.108(b)(1).

We also consider the applicability of your section 552.110 claim to the remaining information. Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. In this case, however, we understand you to assert section 552.110 to protect the city's property interest, not that of a private person. Because most of the information for which you claim section 552.110 was not obtained from a "person," this exception is inapplicable. We note, however, that one of the submitted documents may contain the

proprietary information of a third party, Sentinel. In accordance with section 552.305(d), the city was required to notify Sentinel of the request and of its opportunity to submit comments to this office. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). As of the date of this ruling, this office has not received any comments from Sentinel explaining why the responsive information must be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B) (stating that business entity has ten business days in which to submit to this office its arguments, if any, as to why requested information is protected from disclosure under section 552.110). Therefore, we have no basis on which to conclude that the release of this document would implicate the proprietary interests of Sentinel. See Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); see also Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Consequently, we conclude that none of the submitted information is excepted from disclosure under section 552.110.

In sum, the city may withhold the marked information under section 552.111. The city may not, however, withhold any of the remaining information under sections 552.108 or 552.110. Instead, the remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

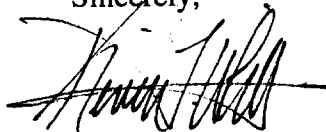
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kevin J. White  
Assistant Attorney General  
Open Records Division

KJW/seg

Ref: ID# 157757

Enc. Marked documents

c: Mr. Charles Castillo  
KTVT-TV CBS 11 News  
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(w/o enclosures)